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October 4, 1996

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; CC Docket No. 96-61

Dear Mr. Caton:

Transmitted herewith on behalf of the State of Alaska are an original and nine copies of the "Comments of the State of Alaska On Request of AMSC Subsidiary Corp. For Extension of Compliance Period" in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

Robert M. Halperin

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

OCT 4 · 1996

Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	CC Docket No. 96-61

COMMENTS OF THE STATE OF ALASKA ON REQUEST OF AMSC SUBSIDIARY CORP. FOR EXTENSION OF COMPLIANCE PERIOD

On August 23, 1996, AMSC Subsidiary Corp. ("AMSC") filed a Request for Extension of Compliance Deadline ("Request") seeking "an extension of at least one year of the deadline for its compliance with any applicable requirements for rate integration" established by the Commission's August 7, 1996 Report and Order in this docket.[1] AMSC's Request is based on essentially the same arguments that it presented to the FCC in rulemaking comments in this proceeding, and the FCC has already rejected them.[2] The State of Alaska ("the State" or "Alaska") submits these comments in response AMSC's Request.

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[1] Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report and Order, FCC 96-331 (August 7, 1996) ("Report and Order").

[2] See Report and Order at ¶¶ 51, 54. AMSC has also filed a petition for reconsideration of that order. That and other petitions for reconsideration and/or clarification of the Report and Order are pending.

INTRODUCTION

All that is placed at issue in this request is whether AMSC should be given more time to comply with the FCC's statutorily-mandated rate integration rule. AMSC says that it is prepared to comply with this requirement.[3] The State believes that AMSC has not established any basis for an extension of the deadline to comply with the FCC's rate integration rule, nor has it demonstrated that granting the requested relief would serve the public interest.

DISCUSSION

In ruling on AMSC's Request, the FCC should keep the following points in mind.

First, Congress provided clear direction that geographic rate averaging and rate integration requirements are to apply to all providers of interexchange services. 47 U.S.C. § 254(g). There is no basis in the statute to conclude that Congress intended rate integration requirements to apply only to some providers of interstate interexchange services and not to others. AMSC admits that it provides interstate interexchange services.[4] Thus, the Commission's rate integration rule must apply to AMSC's provision of interstate interexchange services and the FCC correctly rejected AMSC's arguments to the contrary in the Report and Order.

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[3] AMSC Request at 1.

[4] Id. at 2.

Second, given that AMSC does not and cannot dispute the fact that it provides interstate interexchange service, AMSC has had ample notice that both geographic rate averaging and rate integration would be required. It should have known of these requirements since at least February 8, 1996, when the Telecommunications Act of 1996 was signed into law, if not sooner. It also should have known that the FCC would act promptly to implement these rules, given that Congress required that they be adopted within six months. There has been no showing that AMSC has sought diligently to take steps necessary to comply with these requirements.

Third, there is nothing in the Request to demonstrate why AMSC is unable to comply with the FCC's rules promptly. AMSC says that requiring it to integrate its rates will take away its ability to use unintegrated prices as a means to allocate its power capacity.[5] Yet, this entirely unsubstantiated assertion is insufficient to warrant a waiver or extension of time to comply with statutorily-mandated rules. There is absolutely no showing that AMSC could not implement rate integration virtually immediately if it wanted to do so. There is no showing that current demand for its services exceeds its power capacity. Indeed, AMSC apparently has only about 9,000 subscribers on a system capable of handling 400,000.[6] There is no showing that the only reason demand for its services does not exceed its power capacity now is because demand in areas such as Alaska and

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[5] Id. at 4.

[6] Communications Daily, October 2, 1996 at 9.

Hawaii is reduced due to the higher rates charged for services to those locations. There is no showing that it could not take other steps to maximize its capacity and provide service to all customers if it were to charge integrated rates.

Fourth, AMSC's Request is based on factually erroneous and legally irrelevant premises. AMSC claims that it is entitled to relief because the service it provides is unique. It claims that a significant portion of the traffic on its satellite-based system is more properly classified as local (which AMSC defines as intraLATA) and international communications.[7] Yet, AMSC's service in this regard is by no means unique. A significant portion of the traffic on the networks of other providers of interstate interexchange communications services (e.g., AT&T, MCI, Sprint) is also intraLATA or international in nature. Given that the Telecommunications Act of 1996 seeks to break down the barriers that have, over at least the past decade, kept telecommunications providers from offering different types of services, the jurisdictionally mixed use of telecommunications networks will likely only increase. This factor, therefore, fails to make AMSC unique.

Even if AMSC's provision of a satellite-based interexchange service were unique, there would still be no basis for removing from AMSC the obligations Congress intended to apply to all carriers that provide interexchange services. 47

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[7] AMSC Request at 2 and n.2. See also Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Order and Order Seeking Comment, DA 96-1538 (released September 13, 1996) at ¶ 6.

U.S.C. § 254(g). Indeed, the Commission's rate averaging policy has long been applied to providers of interexchange services by satellite.[8]

AMSC also suggests that it is unique because its system is designed in such a way as to make providing service to Alaska and Hawaii more expensive than providing service to locations in the other 48 states. This factor also does not make AMSC unique. Undoubtedly, other carriers, too, find providing service to Alaska or Hawaii to be more costly than providing service to other portions of the Nation. Indeed, this was one of the problems the FCC wrestled with in the recently concluded and long-running Alaska Joint Board proceeding.[9]

Moreover, it would not matter even if this factor made AMSC unique. Cost differences cannot justify failing to integrate interstate interexchange services rates. If the costs of providing interstate interexchange services to Alaska and Hawaii and other areas were not higher than elsewhere, there would be no need for the FCC's long-standing rate integration policy and Congress's expansion and codification of it. That Congressional action makes clear that the fact that some

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[8] Establishment of Domestic Communications-Satellite Facilities,Second Report and Order, 35 FCC 2d 844, 856-59 (1972), aff'd on recon., Memorandum Opinion and Order, 38 FCC 2d 665, 695-96 (1972), aff'd sub. nom Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975). See Report and Order at ¶ 47 and n.99.

[9] Integration of Rates and Services for the Provision of Communications by Authorized Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994).

areas of the Nation are more costly to serve than others does not provide a basis for failing to charge rate integrated rates.

Indeed, AMSC's claimed uniqueness is irrelevant, given the FCC's repeated determinations that there is a single, nationwide market for interstate interexchange communications services with no relevant product or geographic submarkets.[10] Indeed, in the Notice of Proposed Rulemaking in this docket, the Commission proposes generally to maintain that market definition unless there is evidence of market power in some specific service offering or geographic area.[11]

Fifth, the equities do not favor granting the Request. AMSC claims that the equities of this request include its reliance on specific FCC requirements and approvals in designing its system and structuring its rates. It claims that the Commission approved its satellite design and allowed AMSC's tariff providing for higher rates in Alaska and Hawaii to go into effect when challenged in 1993.[12] However, it is AMSC -- not the FCC -- that designed the satellites and chose to cover Alaska and Hawaii with lower power beams.

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[10] See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fourth Report and Order, 95 FCC 2d 554, 563 (1983), vacated AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied MCI Telecommunications Corp. v. AT&T, 509 U.S. 913, 113 S. Ct. 3020 (1993); Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271, 3286 (1995).

[11] Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Notice of Proposed Rulemaking, CC Docket No. 96-61, FCC 96-123 at ¶¶ 40-53.

[12] AMSC Request at 4-5.

As to allowing AMSC's 1993 tariff with higher rates for Alaska and Hawaii to go into effect, that action cannot possibly restrict the Commission's implementation of the Telecommunications Act of 1996. AMSC ignores the changed circumstances brought about by this Congressional action. Moreover, Commission staff concluded in 1993 only that AMSC's tariff was "not patently unlawful" in light of then existing legal requirements and that it presented no question that warranted suspension or investigation "at this time."[13] This staff action was neither a ruling that AMSC's tariff was lawful in 1993, nor a determination that it is lawful now, in light of Section 254(g) of the Telecommunications Act of 1996.[14]

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[13] AMSC Subsidiary Corp., 8 FCC Rcd 2871 (Comm. Carr. Bur. 1993).

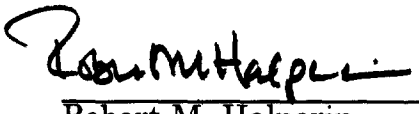
[14] See MCI Telecommunications Corp. v. FCC, 917 F.2d 30, 41-42 (D.C. Cir. 1990) (the decision not to investigate a tariff is entrusted to the FCC's unreviewable discretion).

CONCLUSION

The State believes that AMSC has not demonstrated that the requested extension is necessary or that granting the requested relief would be in the public interest.

Respectfully submitted,

THE STATE OF ALASKA



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of The State of Alaska on Request of AMSC Subsidiary Corp. For Extension of Compliance Period was delivered by hand on October 4, 1996 to the following:

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